Defence in the realm of fear

By Daniel Tynan

Although it is only early days for the Obama Administration, the president and his team have been conspicuously silent about whether they will persist with the Bush administration's controversial doctrine of pre-emptive self-defence. Developed in response to the September 11 attacks, the Bush Doctrine, as it is known, asserts a right to use military force against perceived terrorist threats before those threats can materialise into actual armed attacks.

Asked recently about the future of the doctrine, President-elect Barack Obama, as he was then, responded, 'We have to view our security in terms of a common security and a common prosperity with other peoples and other countries.' While this is by no means a repudiation of the doctrine, we can be hopeful that President Obama's broader foreign policy objectives, which emphasise engagement and multilateralism, may signal a shift back to a pre-Bush position of adherence to the international rule of law.

The Bush Doctrine is a significant departure from accepted norms of international law. After the Second World War, the international community vowed to end the scourge of war and promote international peace and security through proper adherence to principles of justice and international law.

The UN Charter embodies that commitment. Article 2 (4) of the charter prohibits the use of force by one state against others and is considered such a fundamental principle of law that no nation has the right to depart from it.

Military force is allowed only if the Security Council authorises its use or a country acts in self-defence under Article 51 of the UN Charter. The right of self-defence has always allowed countries to defend themselves in anticipation of an armed attack, but only if the threat of attack is credible and imminent. This is important because the destructive capacity of modern weapons of mass destruction naturally means that countries must have the capacity to defend themselves before they are attacked.

Some supporters of the Bush Doctrine argue that the prohibition of the use of force is a relic from a bygone era; a response incapable of regulating military responses to modern forms of asymmetrical warfare, including non-state terrorist threats.

There is some force in that argument, and international law must be able to respond to the reality of modern warfare if it is to remain relevant. But nations must respond within the scope of the law as embodied in the UN Charter. The difficulty with the Bush Doctrine is that it allows a country to act purportedly in self-defence to threats that are not imminent and, as a corollary, may not even be credible.

The allied invasion of Iraq demonstrates the point. In the absence of a compelling case to intervene under Article 51, and citing Iraq's development of nuclear weapons, the US asserted a right of pre-emptive self-defence. The US intervened without authorisation from the Security Council and was widely condemned by the international community for breaching the prohibition of the use of force. After more than five years of occupation, the quagmire in Iraq serves as a warning of the costs of pre-emption.

The present situation in Iran is also problematic. According to some intelligence estimates Iran may have the capacity to develop a nuclear weapon by the end of the year. Although the Security Council has passed three resolutions which oblige Iran to halt its nuclear activities, President Mahmoud Ahmadinejad has ignored these measures and Iran's nuclear programme has developed largely unchecked.

If the US or its allies were to launch targeted strikes against Iran's nuclear facilities, even if they were successful in eliminating the nuclear threat, there is no way to predict how Iran might respond. Iran may increase insurgent activities in southern Lebanon, the Gaza Strip or Iraq, or it may launch retaliatory military attacks on allied forces or civilians in Afghanistan, Iraq or around the world.

Launching pre-emptive strikes against Iran would also reinforce a dangerous precedent, established by the invasion of Iraq, that would enable other countries to act in the same way. Countries such as Pakistan, India, China, North Korea and indeed Iran would be given the green light to advance similar claims and act pre-emptively if they believed they were threatened by another country.

The potential to misuse the doctrine of pre-emption is too great to make it an acceptable approach to maintaining global and regional security.

Australia has also given equivocal support for the doctrine of pre-emption. Although it has never been a stated policy objective, in an interview in 2004 John Howard insisted it was open to Australia to take pre-emptive action against terrorists, particularly in South-East Asia. This generated deep suspicion among our neighbours.

The Howard government also supported the invasion of Iraq, thereby endorsing the doctrine used by the US to justify the allied intervention. The Rudd Government has always been critical of the Bush Doctrine but has not unequivocally disavowed it.

As one of its election commitments, the government is commissioning a Defence white paper which, among other things, will set out Australia's strategic defence and national security objectives. The government should make clear in the white paper that the doctrine of pre-emption forms no part of Australia's defence or foreign policy options.

This would not only honour Australia's commitment to promoting the international rule of law, but demonstrate the kind of global leadership that would be required of Australia if it is to gain a seat on the UN Security Council in 2013.

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